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H. B. 4475

(By Delegates Perry, Boggs, M. Poling, Moye,
Lawrence, Barrett and Skinner)

[Introduced February 11, 2014; referred to the
Committee on Education then Finance.]

**FISCAL
NOTE**

10 A BILL to amend and reenact §18B-19-6 and §18B-19-7 of the Code of
11 West Virginia, 1931, as amended, all relating generally to
12 higher education capital spending projects; requiring a
13 legislative rule be promulgated that establishes the level of
14 a capital project of a higher education institution, other
15 than Marshall University and West Virginia University, before
16 it may be approved; requiring the rule to delineate between
17 repair projects and new construction; and providing that
18 institutions that have entered into construction contracts
19 averaging less than \$20 million over the most recent rolling
20 five-year period and capital projects exceeding \$1 million for
21 community and technical colleges be monitored instead of
22 managed.

23 *Be it enacted by the Legislature of West Virginia:*

24 That §18B-19-6 and §18B-19-7 of the Code of West Virginia,

1 1931, as amended, be amended and reenacted, all to read as follows:

2 **ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.**

3 **§18B-19-6. Capital project financing.**

4 (a) The commission and governing boards, jointly or singly,
5 may issue revenue bonds for capital project financing in accordance
6 with section eight, article ten of this chapter.

7 (b) A governing board may seek funding for and initiate
8 construction or renovation work only for projects contained in an
9 approved campus development plan.

10 (c) A governing board may fund capital improvements on a cash
11 basis, through bonding or through another financing method that is
12 approved by the commission and by the council, if appropriate.

13 (1) If the cost of an improvement project for any institution,
14 except Marshall University or West Virginia University, exceeds
15 \$1 million, the governing board first shall obtain the approval of
16 the commission or council, as appropriate. If the cost of an
17 improvement project for Marshall University or West Virginia
18 University exceeds \$15 million, the governing board first shall
19 obtain the approval of the commission: Provided, That the
20 commission shall by July 1, 2015 promulgate a legislative rule that
21 establishes the level of capital project that any other institution
22 must seek approval from the commission. That rule shall delineate
23 between repair and replacement projects and new construction.

24 (2) Prior to approving bonding or any alternative financing

1 method, the commission, and council if appropriate, shall evaluate
2 the following issues:

3 (A) The institution's debt capacity and ability to meet the
4 debt service payments for the full term of the financing;

5 (B) The institution's capacity to generate revenue sufficient
6 to complete the project;

7 (C) The institution's ability to fund ongoing operations and
8 maintenance;

9 (D) The impact of the financing arrangement on students; and

10 (E) Any other factor considered appropriate.

11 (d) A governing board shall notify the Joint Committee on
12 Government and Finance at least thirty days before beginning
13 construction or renovation work on any capital project in excess of
14 \$1 million.

15 (e) The commission may pledge all or part of the fees of any
16 or all state institutions of higher education as part of a system
17 bond issue.

18 (f) Any fee or revenue source pledged prior to the effective
19 date of this section for payment of any outstanding debt remains in
20 effect until the debt is fully repaid or refunded.

21 **§18B-19-7. Capital project management.**

22 (a) The commission, council and governing boards shall ensure
23 that capital funds are spent appropriately and that capital
24 projects are managed effectively. Project management shall be

1 conducted in all respects according to sound business practices and
2 applicable laws, and rules.

3 (b) The commission shall employ a sufficient number of
4 competent facilities staff experienced in capital project
5 development and management that is suitable for the number, size
6 and complexity of the capital projects being managed. By December
7 31, 2011, and continuing thereafter, at least one employee shall be
8 Leadership in Energy and Environmental Design (LEED) certified.

9 (c) An institution that has entered into construction
10 contracts averaging more than \$50 million over the most recent
11 rolling five-year period is responsible for capital project
12 management at that institution if it meets the following additional
13 conditions:

14 (1) The governing board shall employ a facilities staff
15 experienced in capital project development and management that is
16 suitable for the number, size and complexity of the capital
17 projects being managed and, by December 31, 2011, and continuing
18 thereafter, at least one of these employees shall be Leadership in
19 Energy and Environmental Design (LEED) certified;

20 (2) The governing board shall promulgate and adopt a capital
21 project management rule in accordance with section six, article one
22 of this chapter which is consistent with the capital management
23 rules of the commission and council. The capital project
24 management rule shall include at least the following items:

1 (A) Delineation of the governing board's responsibilities with
2 respect to capital project management and the responsibilities
3 delegated to the institution's president;

4 (B) A requirement for the use of the state's standard contract
5 documents for architectural, engineering, construction,
6 construction management and design-build services as appropriate to
7 a particular project;

8 (C) The governing board's requirements for the following
9 procedures:

10 (i) Monitoring and approving project designs to ensure
11 conformance with the state and system goals, objectives and
12 priorities and the governing board's master plan, compact and
13 campus development plan;

14 (ii) Approving project budgets, including a reasonable
15 contingency reserve for unknown or unexpected expenses and for
16 bidding;

17 (iii) Approving architectural, engineering and construction
18 contracts exceeding an amount to be determined by the governing
19 board;

20 (iv) Approving contract modifications and construction change
21 orders; and

22 (v) Providing a method for project closeout and final
23 acceptance of the project by the governing board.

24 (3) The institutional capital project management rule shall be

1 filed with the commission no later than one hundred eighty days
2 following the effective date of the rule required of the commission
3 and council in section seventeen of this article.

4 (4) The commission may review or audit projects greater than
5 \$5 million periodically to ascertain that appropriate capital
6 project management practices are being employed.

7 (d) For institutions that have entered into construction
8 contracts averaging at least \$20 million, but not more than \$50
9 million, over the most recent rolling five-year period:

10 (1) The governing board, with assistance as requested from the
11 commission, shall manage all capital projects if the governing
12 board meets the following conditions:

13 (A) Employs at least one individual experienced in capital
14 project development and management; and

15 (B) Promulgates and adopts a capital project management rule
16 in accordance with section six, article one of this chapter that is
17 approved by the commission. The capital project management rule
18 may be amended at the discretion of the governing board, but
19 amendments shall be submitted to the commission for review and
20 approval before becoming effective.

21 (2) The capital project management rule of the governing board
22 shall include at least the following items:

23 (A) Delineation of the governing board's responsibilities with
24 respect to capital project management and the responsibilities

1 delegated to the institution's president;

2 (B) A requirement for the use of the state's standard contract
3 documents for architectural, engineering, construction,
4 construction management and design-build services as appropriate to
5 a particular project; and

6 (C) The governing board's requirements for the following
7 procedures:

8 (i) Monitoring and approving project designs to ensure
9 conformance with the state and system goals, objectives and
10 priorities and the governing board's master plan, compact and
11 campus development plan;

12 (ii) Approving project budgets, including a reasonable
13 contingency reserve for unknown or unexpected expenses and for
14 bidding;

15 (iii) Approving architectural, engineering, construction and
16 other capital contracts exceeding an amount to be determined by the
17 governing board;

18 (iv) Approving contract modifications and construction change
19 orders; and

20 (v) Providing a method for project closeout and final
21 acceptance of the project by the governing board.

22 (3) If an institution does not meet the provisions of this
23 subsection, the commission shall manage all capital projects
24 exceeding \$1 million.

1 (4) The commission staff shall review and audit periodically
2 all projects greater than \$1 million to ascertain that appropriate
3 project management practices are being employed. If serious
4 deficiencies are identified and not addressed sufficiently within
5 ninety days, commission staff may assume management of all
6 projects.

7 (e) For institutions that have entered into construction
8 contracts averaging less than \$20 million over the most recent
9 rolling five-year period and for all community and technical
10 colleges, the commission and council shall ~~manage~~ monitor capital
11 projects exceeding \$1 million. In the rule required by section
12 seventeen of this article, the commission and council, as
13 appropriate, shall adopt procedures to afford participation by the
14 governing boards and staff in the planning, development and
15 execution of capital projects.

NOTE: The purpose of this bill is to require a legislative rule that establishes the level of a capital project of a higher education institution, other than Marshall University and West Virginia University, before it may be approved. The bill requires the rule to delineate between repair projects and new construction. The bill provides that institutions that have entered into construction contracts averaging less than \$20 million over the most recent rolling five-year period and capital projects exceeding \$1 million for community and technical colleges be monitored instead of managed.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.